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Current Class: CONFIDENTIAL  
Current Handling: n/a  
Document Number: 1987BOGOTA09089 B6, B1, 1.5(D)

Channel: n/a

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ACTION ARA-00

INFO LOG-00 ADS-00 AID-00 INR-10 SS-00 CIAE-00 EB-00  
DINT-05 DODE-00 H-01 NSAE-00 L-03 PM-10 OPIC-07  
PA-01 CEA-01 OMB-01 STR-17 INRE-00 FRB-03 OES-09  
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TO SECSTATE WASHDC 8111  
INFO DEPTTREAS WASHDC  
USDOC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 BOGOTA 09089

STATE PLS PASS TO OPIC

E.O. 12356: DECL:OADR  
TAGS: EPET, CO  
SUBJECT: COMPTROLLER GENERAL BLASTS OCCIDENTAL TO GET  
AT ECOPETROL

REFS: (A) 86 STATE 360265, (B) 86 BOGOTA 15620, (C)  
BOGOTA 1046, (D) BOGOTA 1423

1. (C) SUMMARY. RODOLFO GONZALEZ GARCIA, COLOMBIA'S  
COMPTROLLER GENERAL, HAS PRESENTED A STUDY ALLEGING THAT  
OCCIDENTAL PETROLEUM COMPANY OVERCHARGED FOR CONTRACTUAL  
SERVICES ASSOCIATED WITH THE CONSTRUCTION OF THE CANO  
LIMON-COVENAS PIPELINE (CLCP) AND FAILED TO LIVE UP TO  
AGREEMENTS WITH ECOPETROL. THESE CHARGES HAVE BEEN MADE  
IN THE PAST AND ARE DISCUSSED IN REFTELS. THE  
COMPTROLLER IS REPORTED TO BE USING THE  
OCCIDENTAL/ECOPETROL HANDLING OF CONTRACTING FOR  
INFRASTRUCTURE DEVELOPMENT TO SCORE POINTS IN A DOMESTIC  
BATTLE WITH ECOPETROL. IT DOES NOT APPEAR, IN SPITE OF  
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THE BAD PRESS GENERATED, THAT THE COMPTROLLER IS  
CONTEMPLATING LEGAL ACTION AGAINST OCCIDENTAL OR THAT  
OCCIDENTAL IS HIS PRIME TARGET. THE COMPTROLLER BLUNTLY

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: OSCAR J. OLSON  
DATE/CASE ID: 5 NOV 2002 200201334

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ACCUSES ECOPETROL OF FAILING TO PROTECT NATIONAL INTERESTS AND OF MISMANAGEMENT. END SUMMARY.

WHAT IS THE COMPTROLLER UP TO?

2. (U) JULY 2 PRESS REPORTS THAT THE COMPTROLLER'S OFFICE HAS PRESENTED A REPORT TO PRESIDENT BARCO SHOWING THAT OCCIDENTAL OVERCHARGED COLOMBIA FOR CONSTRUCTION OF THE CANO LIMON-COVENAS PIPELINE (CLCP) AND ASSOCIATED FACILITIES. THE REPORT PULLS TOGETHER A NUMBER OF THE CHARGES REPORTED IN REFTELS, INCLUDING TAX EVASION, IMPROPER UTILIZATION OF FREE ZONES FOR EQUIPMENT IMPORTS, FAILURE TO DO FEASIBILITY STUDIES REGARDING THE NEED FOR ADDITIONAL PIPELINE INFRASTRUCTURE, OVER-BUILDING CLCP PIPELINE CAPACITY, AND USING ITS INFLUENCE TO AWARD THE CLCP CONSTRUCTION CONTRACT TO BECHTEL, INC. THE MAJOR NEW CHARGE ALLEGES THAT OCCIDENTAL OVERCHARGED COLOMBIA FOR CONSTRUCTION OF THE PIPELINE AND INCURRED EXPENSES IN EXCESS, AND WITHOUT THE APPROVAL OF, THOSE AGREED TO WITH ECOPETROL. IT APPEARS THAT THE COMPTROLLERS REPORT IS DESIGNED TO SHOW SHORT-COMINGS IN ECOPETROL'S HANDLING OF ITS CONTRACTUAL RELATIONS UNDER THE ASSOCIATION CONTRACT SYSTEM. IT DOES NOT APPEAR THAT THE COMPTROLLER IS TRYING TO FORMULATE ADDITIONAL CASES AGAINST OCCIDENTAL.

3. (C) ECONOFF CONTACTED [REDACTED]

[REDACTED] STATED THAT THE REPORT IS NOT DESIGNED TO ATTACK OCCIDENTAL BUT, RATHER, IS A POST HOC EVALUATION OF THE CONFIDENTIAL

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ASSOCIATION'S HANDLING OF THE DEVELOPMENT OF THE CLCP AND ASSOCIATED FACILITIES. THE PROBLEM FOR THE COMPTROLLER IS THAT ECOPETROL DID NOT ADHERE TO GOC DECREE 222 WHICH GOVERNS PUBLIC SECTOR CONTRACTING FOR DEBT AND PUBLIC WORKS. UNDER DECREE 222, ALL CONTRACTING MUST BE OPEN FOR PUBLIC BID AND MUST BE APPROVED BY THE COMPTROLLER'S OFFICE. ECOPETROL ARGUES THAT OIL SECTOR WORKS ARE NOT "PUBLIC WORKS" AND REFUSES TO USE AN OPEN BID PROCESS OR HAVE THE COMPTROLLER APPROVE CONTRACTS. THE COMPTROLLER, BY ATTEMPTING TO SHOW MISMANAGEMENT IN CONTRACTING, APPEARS TO BE TRYING TO INFLUENCE THE CONSEJO DE ESTADO'S DECISION ON THE LEGALITY OF ECOPETROL CLAIM THAT OIL SECTOR WORKS ARE

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NOT PUBLIC WORKS. [ ] SAID THAT THE COMPTROLLER IS NOT INTERESTED IN ANY LEGAL ACTION AGAINST ANYONE, BUT WANTS TO ENSURE THAT PROJECTS OF MAJOR IMPORTANCE TO THE GOC ARE IN FACT HANDLED PROPERLY.

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THE CHARGES

4. (U) CONTRACT ADJUDICATION: THE COMPTROLLER CHARGES THAT THE CONTRACT ADJUDICATION PROCESS WAS IN CONFLICT WITH COLOMBIAN LAW. HE CLAIMS THAT OCCIDENTAL IMPROPERLY USED ITS INFLUENCE TO INSURE THAT THE TURN-KEY CONTRACT WOULD GO TO BECHTEL, THE COMPANY WHICH HAD DONE THE INITIAL FEASIBILITY STUDIES. BECHTEL'S OFFER IS REPORTED TO HAVE BEEN THE MOST ATTRACTIVE ECONOMICALLY, BUT THE COMPTROLLER POINTS OUT THAT AN ADDITIONAL 10 MILLION DOLLARS WAS ADDED TO THE BOTTOM LINE BIDS OF THE OTHER BIDDERS (SPIE CAPAG, ENTREPOSE) BECAUSE OF EXCEPTION TO THE CONTRACT THEY WERE SEEKING.

5. (U) ADVANCE PURCHASES OF TUBING: THE COMPTROLLER CHARGES THAT OCCIDENTAL AUTHORIZED BECHTEL TO PURCHASE

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C O N F I D E N T I A L SECTION 02 OF 03 BOGOTA 09089

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SUBJECT: COMPTROLLER GENERAL BLASTS OCCIDENTAL TO GET TUBING FOR THE PROJECT PRIOR TO THE NAMING OF A GENERAL CONTRACTOR. THIS HE FEELS LED TO THE OVER-PURCHASE OF TUBING AND A COST OVERRUN OF OVER 19 MILLION DOLLARS (OUT OF A TOTAL PURCHASE PRICE OF 79 MILLION).

6. (U) VIOLATION OF AGREEMENTS WITH ECOPETROL: THE COMPTROLLER CHARGES THAT OCCIDENTAL VIOLATED THE FACT OF SPIRIT OF SEVERAL AGREEMENTS WITH ECOPETROL. FIRST, OCCIDENTAL DID NOT DIVIDE THE PROJECT INTO SEGMENTS WITH CONTRACT BIDDING, FOR BOTH GENERAL AND SUBCONTRACTOR, TO TAKE PLACE FOR EACH SEGMENT. SECOND, THE BID PROCESS EVENTUALLY USED WAS FOR A GENERAL CONTRACTOR WHO WOULD BUILD THE ENTIRE PROJECT WITH DISCRETIONARY AUTHORITY TO CHOOSE SUBCONTRACTORS, RATHER THAN A GENERAL CONTRACTOR TO COORDINATE ENGINEERING, PURCHASES, FINANCING AND

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SUBCONTRACTING FOR EACH OF THE INDIVIDUAL SEGMENTS WHICH WERE TO HAVE BEEN SET UP. THIRD, SUBCONTRACTORS WERE NOT CHOSEN THROUGH AN OPEN BID PROCESS. FOURTH, THE CHOICE OF SUBCONTRACTORS WAS NOT APPROVED BY THE GOVERNING BOARD OF THE ASSOCIATION. FIFTH, ADVANCE PURCHASES OF TUBING WERE APPROVED WITHOUT BOARD APPROVAL. SIXTH, CHOICE OF CONTRACTOR WAS DONE UNDER PRESSURE AND WITHOUT PROPER ECONOMIC OR TECHNICAL STUDIES, AND PURCHASES WERE APPROVED WITHOUT KNOWING THE EXACT LENGTH OF THE CLCP.

7. (U) COST OVERRUNS AND OVERCHARGES: THE COMPTROLLER USES THE FOREGOING ANALYSIS TO CHARGE THAT DECISIONS TAKEN BY OCCIDENTAL WITHOUT THE APPROVAL OF ECOPETROL (SOME WITH THE APPROVAL) VIOLATED LEGISLATION GOVERNING PUBLIC SECTOR CONTRACTS, AND LED TO COST OVERRUNS OF US 80 MILLION DOLLARS.

#### OCCIDENTAL RESPONSE

8. (U) OCCIDENTAL, IN A PRESS RELEASED ISSUED JULY 2, DENIES ANY WRONG-DOING, MAINTAINS THAT ALL OF ITS ACTIONS WERE LEGAL AND THAT ECOPETROL WAS NOTIFIED PRIOR TO ANY ACTION BEING TAKEN. OCCIDENTAL OBJECTED TO THE COMPTROLLER'S PRESENTATION OF THE ISSUES RAISED AS THOUGH THEY HAD ALREADY BEEN JUDGED AND THE COMPANY

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FOUND AT FAULT. OCCIDENTAL TOLD THE GOC THAT IT WOULD COOPERATE WITH ALL COMPETENT PUBLIC ENTITIES IN ORDER TO ANALYZE THE DECISIONS TAKEN BY THE ASSOCIATION IN THE DEVELOPMENT OF THE CLCP AND ASSOCIATED FACILITIES. OCCIDENTAL NOTED THAT THE JUSTICE MINISTRY IN FEBRUARY 1987 SAID IT HAD FOUND NO CONDUCT BY THE ASSOCIATION FOR WHICH IT COULD PROSECUTE. OCCIDENTAL CLAIMS THAT IT

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COMPLETED THE CLCP PROJECT IN RECORD TIME, USING THE MOST ADVANCED AVAILABLE TECHNOLOGY, AND WITHIN THE DEMANDS OF COLOMBIAN LAW.

9. (C) ECONOFF CONTACTED OCCIDENTAL [REDACTED]

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[REDACTED] TO DISCUSS MERITS OF COMPTROLLER CHARGES. [REDACTED] SAID THAT THE CHARGES WERE BASELESS AND ONE SIDED. HE NOTED THAT THEY WERE LARGELY REPETITIOUS OF CHARGES PREVIOUSLY BROUGHT FORWARD. [REDACTED] IS OF THE OPINION THAT THE CHARGES ARE NOT AIMED AT OCCIDENTAL BUT FEARS THAT THEY WILL GIVE THE GUERRILLAS, WHO FIND THE PIPELINE A TEMPTING TARGET, ADDITIONAL AMMUNITION TO RESUME ATTACKS. [REDACTED] SAID THAT IF LEGAL CHARGES ARE BROUGHT THEY WILL NOT STAND UP IN COURT. AS HE PUT IT, "THERE IS A CLEAR BASIS FOR EACH DECISION TAKEN." [REDACTED] BELIEVES THAT THE COMPTROLLER IS USING THE CHARGES TO BACK ECOPETROL INTO A CORNER FROM WHICH IT WILL HAVE TO AGREE TO ACCEPTING DECREE 222 IN ALL ITS CONTRACTING. HE FEELS THAT THE COMPTROLLER IS ALSO WORKING TO DISCREDIT THE PREVIOUS ADMINISTRATION'S HANDLING OF THE DEVELOPMENT OF THE CLCP.

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10. (C) IT APPEARS LIKELY THAT THE NEW CHARGES RAISED BY THE CONTROLLERS OFFICE WILL DO MORE HARM TO ECOPETROL'S ABILITY TO GET FOREIGN INVESTORS TO COME AND WORK IN THE COLOMBIAN OIL SECTOR THAN ANY FINANCIAL BENEFIT THE GOC COULD HOPE TO GAIN FROM PUBLIC BIDDING ON CONTRACTS. THE COMPTROLLER'S STUDY IS IN LARGE MEASURE A REHASH OF CHARGES, SEVERAL ALREADY FOUND TO HAVE LITTLE OR NO MERIT, MADE PREVIOUSLY. THE NEW CHARGES APPEAR AS WEAK AS THE OLD AND PROBABLY WOULD NOT HOLD UP IN COURT. OCCIDENTAL IS NOT CONCERNED BY THE NEW DEVELOPMENT AND BELIEVES THEY ARE AIMED AT ECOPETROL. IN ANY CASE, ECOPETROL IS CURRENTLY PREPARING A POINT BY POINT REBUTTAL OF THE CHARGES AND WILL MAKE IT PUBLIC IN THE COMING WEEKS.

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C O N F I D E N T I A L SECTION 03 OF 03 BOGOTA 09089

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